IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 133 of 1994

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHESHBHAI @ BHARARBHAI

Versus

GAURIBEN A PAKHALI & ANOTHER

Appearance:

MR PJ YAGNIK for Petitioner

MR CB DASTOOR for Respondent No. 1

MR ST MEHTA APP for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 22/09/2000

ORAL JUDGEMENT

This Revision Application under section 397 read with section 401 CRPC has been preferred by the Opponent no.1 in Criminal Misc. Application No. 78/90. (hereinafter referred to as 'the petitioner').

Misc. Criminal Application No. 78/90 was filed by the opponent no.1 herein (hereinafter referred to as 'the applicant') before the learned Judicial Magistrate, First Class, Khambhat, under section 125 CRPC. The applicant claimed that she was married to the petitioner at Khambhat on 7th May, 1989 in accordance with their personal law, and had resided with the petitioner at her matrimonial residence at Gandhinagar for some 45 days from the date of her marriage till 15th August, 1989. On 15th August, 1989, she was severely beaten and driven out of her matrimonial house. She was threatened that should she come back, she would be killed. The petitioner was employed as a peon and was earning Rs.2000/- PM and had no other liability. She, therefore, claimed right to maintenance under section 125 CRPC. The application was contested by the petitioner. He denied the allegations of harassment. It was stated that on 15th August, 1989, the applicant had gone to her parents to attend some festivity, and that the petitioner had accompanied her. It was admitted that the petitioner was serving as Peon in Urban Development Department of the State and after all deductions, he received monthly salary of Rs.700/-. He also contended that the applicant was gainfully employed, in as much as, she was serving as Governess in the house of one Vidyaben Rana and was receiving a monthly salary of Rs.400/-. In support of his case, the petitioner produced the letters received by him from the applicant after 15th August, 1989. The learned Magistrate who tried the application, by his judgment and order dated 7th August, 1992, rejected the application. The learned Magistrate recorded a finding that the applicant had no cause to leave her matrimonial house; she was not being harassed; though the petitioner was ready and willing to reside with her, the applicant was not ready and willing to to go and reside with her husband-petitioner. Feeling aggrieved, the applicant preferred Criminal Revision Application No. 104/92 in the Sessions Court at Nadiad. The learned Sessions Judge, Nadiad, by his judgment and order dated 24th December, 1993, allowed the Revision and awarded a monthly maintenance of Rs.300/- to the applicant. The learned Sessions Judge has held that unless there were harassment, the applicant would not have left her matrimonial house, nor she would refuse to go and reside with the applicant-husband. He, therefore, inferred that the applicant was compelled to leave her matrimonial house on account of the harassment meted out by the petitioner and his parents and other family members. He also held that the the gainful employment by the applicant was not proved by examining her employer. The

learned Sessions Judge, therefore, held that the applicant had a valid reason not to live with the petitioner and awarded the maintenance as aforesaid.

Feeling aggrieved, the petitioner has preferred the present petition.

Mr. Yagnik has appeared for the petitioner. He has assailed the judgment and order of the learned Sessions Judge, Nadiad and has supported the judgment of the learned Judicial Magistrate, First Class, Khambhat. In support of his submissions, he has relied upon the judgments of this court in the matters of MIRABEN BHUPATRAI PANDYA VS GYANDEV BALVANTRAI UPADHYAY & ANR, 1 (1987) D.M.Cases, 106; and ANJANABEN PANKAJKUMAR SHAH VS PANKAH KUMAR JAYANTILAL SHAH & ANR, 1(1987) D.M.Cases, 210.

In the matter of Miraben Bhupatrai Pandya (supra), this court has held that - " the jurisdiction of the revisional court under the provisions of the Criminal Procedure Code is limited and is confined to correction of patent illegalities and improprieties and the Sessions Court has no jurisdiction to embark on the fresh evaluation and assessment of evidence ". Same is the view expressed in the matter of Anjanaben Pankajkumar Shah (supra).

Mr. Dastoor has appeared for the applicant and has supported the judgment and order of the learned Sessions Judge. He has relied upon the judgments of the Supreme Court in the matters of - SIRAJMOHMEDKHAN JANMOHAMADKHAN VS HAFIZUNNISA YASINKHAN & ANR (AIR 1981 SC 1972); SMT. KHATOON VS MOHD. YAMIN (AIR 1982 SC 853). He has also relied upon the judgments of this court in the matters of ZAINUBBIBI D/O HUSAINBHAI SHAIKH VS STATE OF GUJARAT & ORS (1984 {2} GLR 887); SMT. SAROJBEN THAKORBHAI PATEL & ANR VS THAKORBHAI ISHWARBHAI PATEL & ANR (1985 {1} GLR 368); DHARMISHTHABEN HASMUKHBHAI VS DR. HASMUKHBHAI PRABHUDAS RANPURS & ANR (1989 {2} GLH 776) and PANNABEN RAMANLAL SONI VS JITENDRAKUMAR CHIMANLAL SONI & ANR (1991 {1} GLH 646).

In the matter of Sirajmohmedkhan Janmohamadkhan (supra), the Hon'ble Supreme Court has held that apprehension of physical harassment on part of wife due to consistent demand of Dowry is just ground for refusal of the wife to live with her husband. In the matter of Khatoon (supra), the letter addressed by the husband to the wife asking her to come back to him otherwise the

letter would be treated as a divorce was held to be an unreasonable threat constituting sufficient reason for the wife to refuse to live with her husband. In the matter of Zainubbibi (supra), this court held that "Even if there be slightest ill-treatment, it would not be improper for any self-respecting woman to say that she would not like to stay with her husband. Furthermore, in cases where there is physical beating to the wife, howsoever mild it may be, (punctuation altered) she would surely be entitled to stay separate and claim maintenance". In the matter of Sarojben (supra), once again this court has held that beating a wife is sufficient ground for separate residence and claim maintenance. Allegation about infidelity also amounts to mental cruelty. In the matter of Dharmishthaben (supra), this court has held that a wife is entitled to refuse to return to the matrimonial home and yet claim maintenance if the husband is living in adultery and otherwise tortures the wife. In the matter of Pannaben (supra), this court has held that "The wife who is neglected or refused or deserted by her husband, would be said to be a wife unable to maintain herself even though subsequently after her desertion, for her survival in this world, she is engaged in some labour work and earning something out of it, such wife would be certainly said to be a wife unable to maintain herself". As it is obvious all these judgments have been decided on the peculiar facts of the concerned case. So far as the principle as regards the right of a wife to maintenance is concerned, there shall be no dispute. No woman is expected to suffer torture/cruelty and continue to stay with her husband. If such woman decides to have a separate residence and refuses to reside with her husband, she would surely be entitled to maintenance from her husband. However, this is not one of such cases. As I shall presently show neither the applicant was harassed nor she had a valid reason to refuse to reside with her husband-the petitioner. None of the above referred judgments, therefore, shall apply on the facts of the present case.

Upon perusal of the record, it appears that the learned Sessions Judge has erred in inferring that the applicant was being harassed by the petitioner, or that she was not gainfully employed. However, it is not relevant whether the applicant was gainfully employed or not. Since, unless the applicant proved that she was compelled to leave her matrimonial house, she can not be held to be entitled to maintenance. It should be noted that the applicant was estranged from the petitioner within less than four months of her marriage. During the said period, she had lived with the petitioner only for

45 days. The letters produced by the petitioner and admitted in evidence are evidently written by the applicant. The said letters have been written by the applicant from her parental house after 15th August, 1989, on which day the applicant was alleged to have been beaten and driven out of the house. The contents of those letters do not support the allegation of the applicant that she was harassed either by the petitioner or any of his family members as alleged. Had the applicant been harassed and beaten as alleged by her, the tenor of the letters would have been quite different. The learned Magistrate was right in holding that the applicant was not harassed by the petitioner, nor was she compelled to leave her matrimonial house. She had no valid reason to refuse to reside with the petitioner. If the applicant had chosen not to leave with her husband-the petitioner of her own volition, she can not claim maintenance from the petitioner.

The learned Magistrate has carefully considered each and every piece of evidence and has concluded that the applicant had no cause to reside separate from her husband. The learned Magistrate has also found that the applicant was adamant; had made contradictory statements; and had falsely denied the letters written by her to the petitioner. In my view, the learned Sessions Judge exercising his revisional jurisdiction, has grossly erred in reappreciating the evidence and in substituting findings recorded by the learned Magistrate. Besides, the findings recorded by the learned Sessions Judge are based on presumptions and conjectures.

In view of the above discussion, the Revision Application is allowed. The judgment and order dated 24th December, 1993 of the learned Sessions Judge, Nadiad, passed in Criminal Revision Application No. 104/92 is quashed and set aside. The order dated 7th August 1992 by the learned JMFC, Khambhat, passed in Criminal Misc. Application No. 78/90 is restored. It is however directed that the petitioner will pay all the arrears of maintenance ordered to be paid under the order dated 24th December, 1993, due and payable till 1st October, 2000. Such payment shall be made by 1st January, 2001. Rule is made absolute in above terms.

(MS R.M.DOSHIT J)

JOSHI